

AIR SERVICES AGREEMENT

BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT

AND THE

GOVERNMENT OF THE REPUBLIC OF KENYA

The Austrian Federal Government and the Government of Kenya, hereinafter referred to as "the Contracting Parties", being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

Desiring to organize, in a safe and orderly manner, international air services and to promote in the greatest possible measure international cooperation in respect of such services; and

Desiring to establish an Agreement to foster the development of scheduled air services between and beyond their territories,

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of the present Agreement:

- a)** The term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, including any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 (a) thereof, so far as those Annexes and amendments are applicable for both Contracting Parties;
- b)** The term "aeronautical authorities" means, in the case of the Government of Kenya and in the case of the Austrian Federal Government the Ministry for Transport, Innovation and Technology or, in both cases, any person or body authorized to perform any functions at present exercised by the said authorities or similar functions;
- c)** The term "agreed services" means scheduled international air services on the route(s) specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail;
- d)** The term "designated airline" means any airline, which has been designated and authorised in accordance with Article 3 of the present Agreement;
- e)** The term "territory" has the meaning assigned to it in Article 2 of the Convention;
- f)** The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings assigned to them in Article 96 of the Convention;
- g)** The term "specified route" means a route specified in the Annex to this Agreement.
- h)** The term "capacity" in relation to agreed services means the available payload of the aircraft used on such services, multiplied by the frequency operated by such aircraft over a given period on a route or section of a route.
- i)** The term "tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including commission charges

and other additional remuneration for agency or sale of transportation documents, but excluding remuneration and conditions for the carriage of mail; and

- j)** The term "Annex" means the Annex to this Agreement as amended. The Annex forms an integral part of the Agreement and all references to the Agreement shall include reference to the Annex except where otherwise provided.
- k)** References in this Agreement to nationals of the Republic of Austria shall be understood as referring to nationals of European Union Member States.
- l)** References in this Agreement to airlines of the Republic of Austria shall be understood as referring to airlines designated by the Republic of Austria.
- m)** References in this Agreement to the "EU Treaties" shall be understood as referring to the Treaty on European Union and the Treaty on the functioning of the European Union.

ARTICLE 2

GRANT OF RIGHTS

- 1)** Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating scheduled international air services on the routes specified in the Annex to this Agreement.

- 2)** Subject to the provisions of this Agreement the airlines designated by each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:
 - a)** The right to fly across its territory without landing, and

 - b)** The right to make stops in its territory for non-traffic purposes.

 - c)** The right to make stops in the territory of the other Contracting Party at the points specified in the Annex for the purpose of taking on board and disembarking passengers, baggage, cargo including mail, separately or in combination, destined for or coming from point(s) in the territory of the first Contracting Party.

- 3)** Nothing in paragraph (2) shall be deemed to confer on the airlines designated by one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, baggage and cargo including mail for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

DESIGNATION AND REVOCATION

Designation and Authorization

1. Either Contracting Party shall have the right to designate, by written notification through diplomatic channels to the other Contracting Party, one or more Airline(s) for the purpose of operating the Agreed Services on the Specified Routes and to withdraw the designation of any Airline or to substitute another Airline for one previously designated.

2. Upon receipt of such a notification, each Contracting Party shall, without delay, grant to the Airline(s) so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article, provided that:
 - a. in the case an Airline is designated by the Republic of Austria:
 - i. the Airline is established in the Territory of the Republic of Austria under the European Union Treaties and has a valid operating licence in accordance with European Union law; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the European Union Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation; and
 - iii. the Airline is owned, directly or through majority ownership, and is effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States,

- b. in the case an Airline is designated by the Republic of Kenya:
 - i. the Airline is established in the Territory of the Republic of Kenya and has a valid Operating Licence in accordance with applicable law of the Republic of Kenya; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the Republic of Kenya responsible for issuing its Air Operator's Certificate; and
 - iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,

and that:

- c. the Government designating the Airline is maintaining and administering the standards set forth in Articles on Fair Competition, Safety and Aviation Security; and
 - d. the Designated Airline(s) is/are qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of International Air Services by the Contracting Party considering the application or applications.
- 3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airline(s) may at any time begin to operate the Agreed Services, in part or in whole, provided that it complies with the provisions of this Agreement.
 - 4. The Aeronautical Authorities of one Contracting Party may require an Airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operations of international Air Services.

Revocation and Suspension of Authorization

5. Either Contracting Party may revoke, withhold, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party where:
 - a. in the case an Airline is designated by the Republic of Austria:
 - i. the Airline is not established in the Territory of the Republic of Austria under European Union Treaties or does not have a valid Operating Licence in accordance with European Union law; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the European Union Member State responsible for issuing its Air Operator's Certificate or the relevant Aeronautical Authority is not clearly identified in the designation; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States,
 - b. in the case an Airline is designated by the Republic of Kenya:
 - i. the Airline is not established in the Territory of the Republic of Kenya or has no valid operating licence in accordance with applicable law of the Republic of Kenya; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of Kenya or Kenya is not responsible for issuing its Air Operator's Certificate; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,
 - c. in case the other Contracting Party is not maintaining and administering the standards set forth in Articles on Fair Competition, Safety and Aviation Security;

- d. in the event of failure by such Airline to qualify before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of International Air Services by these Authorities in conformity with the Convention;
- 6. Unless immediate action is essential to prevent further non-compliance with the conditions as referred to in paragraph 1 of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of the confirmation of receipt of the request.
- 7. This Article does not limit the rights of either Contracting Party to withhold, suspend, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of the other Contracting Party in accordance with the provisions of Articles on Fair Competition, Safety and Aviation Security of this Agreement.

ARTICLE 4

APPLICABILITY OF LAWS AND REGULATIONS

- 1)** The laws and regulations of one Contracting Party shall apply to the navigation and operation of the aircraft of the airlines designated by the other Contracting Party during entry into, flying over, stay in and departure from the territory of the first Contracting Party.
- 2)** The laws and regulations of one Contracting Party governing entry into, stay in and departure from its territory of passengers, crew, cargo or mail such as formalities regarding entry, exit, emigration, immigration, customs, health and quarantine shall apply to passengers, crew, cargo and mail carried by aircraft of the airlines designated by the other Contracting Party whilst they are within the said territory.
- 3)** In pursuance of Annex 9 of the Convention, each Contracting Party shall take appropriate measures in order to ensure that only passengers with valid and authentic travel documents which are required for the entry in or transit through the territory of the other Contracting Party are carried.
- 4)** If a Contracting Party observes a substantial increase of illegal migration or other threats to its internal security as a consequence of the application of this Agreement, in pursuance of Annex 9 of the Convention, the other Contracting Party shall allow the deployment of document advisers by the Contracting party or by the air carrier of each Party. If the deployment of document advisers turns out not to be sufficient the concerned Contracting Party may take appropriate measures.
- 5)** Each Contracting Party shall, upon request, supply to the other Contracting Party copies of the relevant laws and regulations referred to in this Article.

ARTICLE 5

EXEMPTION FROM CUSTOMS AND OTHER DUTIES

1) Aircraft operated on international services by the airline(s) designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2) In addition, the following shall also be exempt from the same duties and taxes with the exception of charges corresponding to the service performed:

- a)** aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the appropriate authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;
- b)** spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline(s) of the other Contracting Party;
- c)** fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline(s) of the other Contracting Party, even if these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) of this paragraph may be required to be kept under customs supervision or control.

3) The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Contracting Party. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 6

TAXATION

- 1)** Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

- 2)** Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

- 3)** Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

ARTICLE 7

USER CHARGES

- 1)** Each Contracting Party shall not impose or permit to be imposed on the airlines designated by the other Contracting Party user charges higher than those imposed on its own airlines operating similar international services.
- 2)** Those charges shall not be higher than the charges imposed upon aircraft of the designated airlines of each Contracting Party engaged in similar international services.
- 3)** Such charges shall be just and reasonable and shall be based on sound economic principles.

ARTICLE 8

TRAFFIC IN DIRECT TRANSIT

Passengers, baggage and cargo including mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against the threat of unlawful interference, such as violence and air piracy and occasional measures for the combat of illicit drug traffic, be subject to no more than a simplified control. Baggage, cargo and mail in direct transit shall be exempt from custom duties, charges and other similar taxes.

ARTICLE 9

RECOGNITION OF CERTIFICATES AND LICENCES

- 1)** Certificates of airworthiness, certificates of competency and licences issued or validated in accordance with the laws and regulations of one Contracting Party, including, in the case of the Republic of Austria, European Union laws and regulations, and unexpired shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services, provided always that such certificates or licences were issued or validated, equal or above the minimum standards established under the Chicago Convention.
- 2)** Paragraph 1) also applies with respect to an airline designated by the Austrian Federal Government whose regulatory control is exercised and maintained by another European Union Member State.
- 3)** Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its own territory, certificates of competency and licences granted or validated to its own nationals by the other Contracting Party or by any other State.

ARTICLE 10

TARIFFS

1) Each Contracting Party shall allow tariffs for scheduled air services to be established by each airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- a)** prevention of unreasonably discriminatory tariffs or practices;
- b)** protection of consumers from tariffs that are unreasonably high or restrictive due to the abuse of a dominant position or to concerted practices among air carriers; and
- c)** protection of airlines from tariffs that are artificially low due to direct or indirect governmental subsidy or support.

2) Tariffs for scheduled international air services between the territories of the Contracting Parties shall not be required to be filed. Notwithstanding the foregoing, the airlines of the Contracting Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed tariffs to the aeronautical authorities of the Contracting Parties in a manner and format acceptable to those aeronautical authorities.

ARTICLE 11

COMMERCIAL REPRESENTATION AND ACTIVITIES

- 1)** The airlines designated by each Contracting Party shall be allowed:
 - a)** To establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as, in accordance with the legislation of such other Contracting Party, other facilities required for the provision of air transportation;
 - b)** To bring in and maintain in the territory of the other Contracting Party – in accordance with the legislation of such other Contracting Party relating to entry, residence and employment – managerial, sales, technical, operational and other specialist staff required for the provision of air transportation; and
 - c)** In the territory of the other Contracting Party to engage directly and, at the airlines discretion, through its agents in the sale of air transportation.
- 2)** The competent authorities of each Contracting Party will take all necessary steps to ensure that the representation of the airlines designated by the other Contracting Party may exercise their activities in an orderly manner.
- 3)** The airlines designated by each Contracting Party shall have the right to sell, in the territory of the other Contracting Party, air transportation and any person shall be free to purchase such transportation in the currency of that territory or in freely convertible currencies of other countries in accordance with the foreign exchange regulations in force.

ARTICLE 12

COMMERCIAL OPPORTUNITIES

1) Ground Handling

Each designated airline shall have the right to provide its own ground handling services ("self-handling") in the territory of the other Contracting Party or otherwise to contract these services out ("third party-handling"), in full or in part, at its option, with any of the suppliers authorized for the provision of such services. Where or as long as the laws and regulations applicable to ground handling in the territory of one Contracting Party prevent or limit either the freedom to contract these services out or self-handling, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.

"Self-handling" means a situation in which the airport user directly provides for himself one more categories of ground handling services and concludes no contract of any description with a third party for the provision of such services; for the purpose of this definition, among themselves airport users shall not be deemed to be third parties where:

- a) one holds the majority in the other, or
- b) a single body has a majority holding in each.

2) Code – Share

In operating or holding out services under this Agreement, any air carrier of a Party may enter into cooperative marketing arrangements, such as blocked-space agreements or code-sharing arrangements, with:

- a) any air carrier or carriers of the Parties; and
- b) any air carrier or carriers of a third country; and
- c) any surface (land or maritime) transport provider;

provided that (i) the operating carrier holds the appropriate traffic rights and (ii) the marketing carriers hold the appropriate underlying route rights and (iii) the arrangements meet the requirements relating to safety and competition normally applied to such arrangements. In respect of passenger transport sold involving code-shares, the purchaser shall be informed at the point of sale, or in any case before boarding, which transport providers will operate each sector of the service.

3) Leasing Arrangements

The designated airlines of each Contracting Party shall have the right to perform the agreed services on the specified routes using aircraft (or aircraft and crew) leased from any company, including other airlines, subject to being authorized to use the aircraft (or aircraft and crew) on such basis by the Aeronautical Authorities of both Contracting Parties.

ARTICLE 13

CONVERSION AND TRANSFER OF REVENUES

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right to freely transfer to its home territory the excess sums of receipts over expenditures in accordance with the foreign exchange regulation in force, in territory of which receipts are earned. The conversion of receipts of the designated airlines of one Contracting Party into local currency of the other Contracting Party shall be done in accordance with the foreign exchange regulation in force.

ARTICLE 14

FAIR COMPETITION AND STATE AID

- 1)** Each Contracting Party shall allow fair and equal opportunity for the designated airlines of both Contracting Parties to compete in providing the international air transport governed by this Agreement.
- 2)** Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines designated by the other Contracting Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
- 3)** Airlines designated by a Contracting Party may be required to submit their flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of their introduction. The same procedure shall apply to any modification thereof. In special cases this time limit may be reduced subject to the consent of the said authorities.
- 4)** The designated airline of either Contracting Party in conjunction with any other airline or airlines or separately shall not

 - a)** abuse dominant market power, for example through capacity dumping or charging fares and rates at levels which are, in the aggregate, insufficient to cover the costs providing the services to which they relate in a way which has or is likely or intended to have the effect of severely weakening a competitor or excluding a competitor from a route, or
 - b)** having agreements, decisions or concerted practices which have as their objective or effect the prevention, restriction or distortion of competition.
- 5)** Neither Contracting Party shall provide or permit state subsidy or support for or to its designated airline or airlines in such way that would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing international air transportation.

6) State subsidy or support means the provision of support on a discriminatory basis to a designated airline, directly or indirectly, by the state or by a public or private body designated or controlled by the state. Without limitation, it may include the setting-off of operational losses; the provision of capital, non-refundable grants or loans on privileged terms; the granting of financial advantages by forgoing profits or the recovery of sums due; the forgoing of a normal return on public funds used; tax exemptions; compensation for financial burdens imposed by the public authorities; or discriminatory access to airport facilities, fuels or other reasonable facilities necessary for the normal operation of air services.

7) Where a Contracting Party provides state subsidy or support to a designated airline in respect of services operated under this Agreement, it shall require that airline to identify the subsidy or support clearly and separately in its accounts.

8) If one Contracting Party has substantiated concerns that its designated airlines are being subjected to discrimination or unfair practices, or that a subsidy or support being considered or provided by the other Contracting Party would adversely affect or is adversely affecting the fair and equal opportunity of the airlines of the first Contracting Party to compete in providing international air transportation, it shall have the right to request consultations in accordance with Article 19 (on Consultations) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultations shall begin within 30 days of the request. If the Contracting Parties fail to reach a resolution of the matter through consultations within 30 days from the start of consultations or consultations did not start within a period of 30 days of receipt of the request, the Contracting Party which requested the consultations shall have the right to suspend the exercise of the rights specified in Article 2 of the present agreement by the airline designated by the other Contracting Party, or to revoke the operating authorization, or to impose such conditions as it may deem necessary on the exercise of these rights.

9) The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation.

ARTICLE 15

SAFETY

1) Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.

2) If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of paragraph (5) of Article 3 (designation and revocation) of this Agreement.

3) Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any aircraft operated by the designated airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

4) If any such ramp inspection or series of ramp inspections gives rise to:

- a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
- b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered

valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5) In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by or on behalf of the airline or airlines of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

6) Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of the airline operation.

7) Any action by one Contracting Party in accordance with paragraphs (2) or (6) above shall be discontinued once the basis for the taking of that action ceases to exist.

8) Where the Republic of Austria has designated an airline whose regulatory control is exercised and maintained by an European Union Member State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other European Union Member State and in respect of the operating authorisation of that airline.

ARTICLE 16

SECURITY

1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2) The Contracting Parties shall in particular act in conformity with the provisions of:

- a)** The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
- b)** The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- c)** The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
- d)** The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988;
- e)** The Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991,

and any other multilateral agreement governing aviation security binding upon both Contracting Parties.

3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Chicago Convention to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft which have their principal place of business or permanent residence in the territory of the Contracting Parties or, in the case of the Republic of Austria, operators of aircraft which are established in its territory under the EU Treaties and have valid Operating Licences in

accordance with European Union law, and the operators of airports in their territory act in conformity with such aviation security provisions.

4) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

5) Each Contracting Party agrees that its operators of aircraft shall be required to observe, for departure from or while within the territory of the other Contracting Party, aviation security provisions in conformity with the law in force in the country, including, in the case of the Austrian Republic, European Union law.

6) Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading.

7) Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

8) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

9) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within one (1) month of the date of such request shall constitute grounds for application of paragraph (5) of Article 3 of this Agreement (designation and revocation). If required by a serious emergency, either Contracting Party may take interim action prior to the expiry of a month period.

ARTICLE 17

PROVISION OF STATISTICS

The aeronautical authorities of one Contracting Party shall supply the aeronautical authorities of the other Contracting Party, at their request, with such statistics as may be reasonably required for information purposes subject to the laws and regulations of each Contracting Party.

ARTICLE 18

CONSULTATIONS

- 1) The aeronautical authorities of each Contracting Party shall consult each other from time to time, in order to ensure close cooperation concerning all the issues related to the interpretation and application of this Agreement, on request of either Contracting Party.
- 2) Such consultations shall begin within a period of sixty (60) days from the date of request of one Contracting Party.

ARTICLE 19

MODIFICATIONS

- 1) If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may at any time request consultations with the other Contracting Party. Such consultations (which may be prepared by discussions between the aeronautical authorities), shall begin within a period of sixty (60) days from the date of the request, unless both Contracting Parties agree to an extension of this period.

2) Modifications so agreed upon shall be approved by each Contracting Party and shall enter into force on the first day of the second month, following the month on which the two Contracting Parties have notified each other by an exchange of diplomatic notes that the requirements for its entry into force under their respective legal procedures have been fulfilled.

3) Modifications to the Annex of this Agreement may be agreed directly between the aeronautical authorities of the Contracting Parties and enter into force when confirmed by an exchange of diplomatic notes.

ARTICLE 20

SETTLEMENT OF DISPUTES

1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2) 2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to an arbitrator, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated.

3) 3. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of sixty (60) days.

4) 4. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or the third arbitrator is not appointed within in the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as president of the tribunal and shall determine the place where the arbitration will be held. If the President considers that he is a national of a state, which cannot be regarded as neutral in relation to the dispute, the most

senior Vice President who is not disqualified on that ground shall make the appointments. The arbitral tribunal shall reach its decision by a majority of votes.

5) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.

6) If and as long as either Contracting Party fails to comply with any decision given under paragraph (2) of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to a designated airline in default.

7) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph (4) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 21

TERMINATION

1) Each Contracting Party may, at any time, give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organisation.

2) In such the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 22

REGISTRATION

This Agreement and amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 23

ENTRY INTO FORCE

This agreement shall enter into force on the first day of the second month that follows the month during which the two Contracting Parties have completed to notify each other by an exchange of diplomatic notes that the requirements for its entry into force under their respective legal procedures have been fulfilled.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by the respective Governments, have signed this Agreement.

Done in duplicate at this.....day of.....in the German and English languages, all texts being equally authentic. In the case of differences in interpretation of provisions of this Agreement the English text shall prevail.

**FOR THE AUSTRIAN FEDERAL
GOVERNMENT**

**FOR THE GOVERNMENT OF
KENYA**

ANNEX

Section I:

A. The airline(s) designated by Austria shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of Origin:	Intermediate points:	Points of Destination:	Points beyond:
Points in Austria	Any points	Points in Kenya	Any points

B. The airline(s) designated by Kenya shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of Origin:	Intermediate points:	Points of Destination:	Points beyond:
Points in Kenya	Any points	Points in Austria	Any points

Section II:

Any intermediate points and points beyond may be served by the designated airline(s) of each Contracting Party without exercising Fifth Freedom traffic rights.

The exercise of Fifth Freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.

Section III:

The designated airline(s) of either Contracting Party may, on any or all flights, omit calling at any of the intermediate and/or beyond points, provided that the agreed services on this route start and terminate in the territory of that Contracting Party.